

THE UNINTENDED CONSEQUENCES OF “PERMITTED DEVELOPMENT”

A briefing document produced for Graham Stuart MP for the attention of Sir John Whittingdale, Minister for Data and Digital Infrastructure, Department for Science, Innovation & Technology

Also see case study – The Hedon Experience timeline.



THE UNINTENDED CONSEQUENCES OF “PERMITTED DEVELOPMENT”

This briefing uses our experience in Hedon in the East Riding as a case study to highlight aspects of the permitted development legislation that we believe requires review and revision to prevent unintended consequences. We will also refer to the experiences in Hull and elsewhere.

We suggest steps that could be taken now to resolve the crisis in the Hedon area, measures which require further research and investigation that will impact on a national level, and our desired outcome that telegraph poles be excluded from permitted development.

The Electronic Communications Code refers to 'operators' with code powers and we will refer to this term throughout this document when describing MS3 Networks and other network builders and providers.

Premise:

REGULATION:

1. There is a lack of – or perceived lack of - regulation of operators which has in practice restricted the ability of local planning authorities (LPA) to enforce conditions of compliance on operators. This lack of necessary enforcement has led to adverse impacts on communities and the local environment from the rollout of infrastructure by operators.

POOR OPERATING PRACTICE, LACK OF COMMUNITY
ENGAGEMENT:

2. Permitted development has given rise to operators whose behaviour, poor operating practice and poor community engagement skills are not consistent with the spirit and intentions of the permitted development legislation.

3. KCOM SHARING AGREEMENT:

“The requirements on operators to share apparatus and infrastructure where practicable, and to use underground (rather than overground) lines where reasonably practicable (with certain exceptions)”, has led to an ambiguity locally where KCOM is the main provider. The local operator has chosen to

deploy telegraph poles as a commercial decision, historically criticising KCOM for its unfair trading terms. However, the requirement to share infrastructure as an option has not been explored by the operator.

PROLIFERATION OF TELEGRAPH POLES:

4. Permitted development has encouraged competition with mainstream providers, but also between new network providers. This has led to the proliferation of poles in some areas. In the KCOM area we have seen Connexin poles and MS3 poles planted in close proximity to each other, and potentially there are two other providers that could result, in some instances, of up to four different company poles being planted on a single street.

The above 1 - 4, in practice, has led to communities which have clearly expressed a wish not to have new telegraph poles, being forced to accept them.

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The experience in Hedon, which seems to be replicated across the country, is that local authorities have been frustrated at managing operators. ERYC published a statement which advised residents to complain to the operators themselves, or to Ofcom with their concerns about the actions of operators.

“As a local planning authority, we are required to be notified of the operator’s intentions, but the Council is not responsible for issuing permission for the erection of this form of telecommunications apparatus nor is it responsible for the regulation of the works undertaken by the operators, this is a matter for Ofcom.” - ERYC Telecoms Note

Our understanding is that the local planning authority *can* suggest conditions with which they wish the operator to be complicit in relation to the installation of apparatus, particularly telegraph poles. Additionally, the LPA can notify Ofcom regarding any failure of operators to comply with their duties under the 2003 regulations.

Planning departments had been informed by the government in April (by Julia Lopez MP) that they should set conditions to check adherence to the code.

The experience in Hedon has revealed, despite operator's claims that they adhere to council regulation and HAUC specification in their works, that there has been breach after breach of regulations. Campaigners have gathered a catalogue of such breaches and sent them into ERYC for examination and action.

As a matter of urgency, we think the Government should produce guidelines for LPAs in how to manage network operators when they roll in to an area and clarify the powers still available to them under permitted development. This includes the right to issue Stop Work Notices and rescind permits in cases where regulations are clearly being breached.

The LPA should set conditions for the operators to adhere to the code of practise, by a framework of actions, and where there is non compliance, the LPA should report to OFCOM.

Code of Practice relating to Electronic Communications Code and the Electronic Communications Code (Conditions and Restrictions) Regulations 2003 and Part 16 of Schedule 2 to the Town and Country (General Permitted Development) (England) Order 2015 (GPDO) should be mandatory and not a voluntary option.

We notice the provisions in the PSTI Act regarding making operators subject to joining an ADRS (Alternative Dispute Resolution Scheme). We see this as a real step forward opening up opportunities to take disputes outside of the operator's organisation. How does the scheme operate? Is it the same as for broadband providers?

POOR OPERATING PRACTICE, LACK OF COMMUNITY ENGAGEMENT:

Permitted development has given rise to operators whose behaviour, poor operating practice and poor community engagement skills are not consistent with the spirit and intentions of the permitted development legislation.

Hedon Town Council has confirmed that other than the initial meeting in 2022 at which MS3 said they intended to go underground with their services, and further meetings with the council regarding council land, then no consultation or community engagement has been undertaken by the operator.

The 28 day notice on lampposts was the main public notification method used. A MS3 flyer posted out to households resembled an ISPs advert and highlighted cheaper broadband opportunities rather than pole deployment.

It is obvious that the operator must have become aware of the strength of local

feeling against poles in Hedon communities, at an early stage. However, rather than try to redress this in some way, the operator carried on with its pole deployment anyway.

Our study of how operators have acted in other areas have revealed a typical pattern: Pole notices appear. Residents complain. Petitions are organised, complaints are lodged with councils, elected politicians and Ofcom – and then pole deployment begins. The first time that most residents realise what is going on is when poles start appearing on the street.

We suggest that research nationally takes place to discover the experiences of other resident communities that have had permitted development 'done' to them, but also to discover those where the experience has been positive, and learn the lessons from these case studies.

The lack of community consultation is clearly not satisfactory. We would suggest as a minimum, that before 28 day notices are served, the onus should be put on the operator to visit a target area at least a month before and organise a public meeting with a question and answer element to assess any local concerns. Whilst the onus should be on the operator to resource and organise consultation meetings, they might choose to partner with a local county, district, town or parish council to help organise the meeting. Where the mood is one of overwhelming opposition to telegraph poles, then the operator may seek an option to enter into the traditional planning process.

The success of these exploratory meetings would depend on the local circumstances, and whether the proposed install was new first time infrastructure, replacing outdated infrastructure, or competing with established infrastructure.

In addition to, or as part of, the required 28-day notice, the operator should be required to place a site notice to inform nearby residents of the intention to install a pole, and its proposed location with a map, and clearly state on the site notice, the avenues open to object.

KCOM SHARING AGREEMENT:

“The requirements on operators to share apparatus and infrastructure where practicable, and to use underground (rather than overground) lines where reasonably practicable (with certain exceptions)”, has led to an ambiguity locally where KCOM is the main provider. The local operator has chosen to deploy telegraph poles as a commercial decision, historically criticising KCOM for it's unfair trading terms. However, the requirement to share infrastructure as an option has not been explored by the operator.

We note: The PSTI Act introduced new measures that will make it easier for operators to upgrade and share the use of existing underground ducts and telegraph poles, reducing the need for future installations.

In the KCOM area, where the operators have historically chosen not to work with KCOM as the main provider and share infrastructure, and have chosen not to raise complaints about KCOM's monopoly with Ofcom, then the option to do so should be the focus of a compulsory external facilitated effort. We would assume this is a role for Ofcom?

We suggest no licence to be issued until negotiations to share infrastructure have been completed.

PROLIFERATION OF POLES:

Permitted development has encouraged competition with mainstream providers, but also between new network providers. This has led to the proliferation of poles in some areas. In the KCOM area we have seen Connexin poles and MS3 poles planted in close proximity to each other, and potentially there are two other providers that could result, in some cases, of up to four different company poles, being potentially planted less than 2m apart, on a single street.

Did the government anticipate that the legislation would mean that there would be a nationwide mass installation of poles? We see the proliferation of poles as another unintended consequence of permitted development and perhaps the worst in that it blights the visual aspect of communities, causing additional obstacles for motor vehicles, the visually impaired, wheelchair and pram users. This is particularly alarming in areas where most services are actually underground and it creates a whole layer of new and unnecessary street furniture.

Will the provisions of the PSTI Act lead to reduced instances of pole proliferation? And if so, what can be done in areas where operators are already competing over different poles that have been installed? What can be done to immediately address these issues and ultimately to close what appears to be a loophole in the legislation?

QUESTIONS/ISSUES FOR WEDNESDAY 8 NOVEMBER MEETING:

- 1. As a matter of urgency, we think the Government should produce guidelines for LPAs in how to manage network operators when they roll*

in to an area and clarify the powers still available to them under permitted development. This includes the right to issue Stop Work Notices and rescind permits in cases where regulations are clearly being breached.

- 2. In the KCOM area, where the operators have historically chosen not to work with KCOM as the main provider and share infrastructure, and have chosen not to raise complaints about KCOM's monopoly with Ofcom, then the option to do so should be the focus of a compulsory external facilitated effort. We would assume this is a role for Ofcom? We suggest no licence to be issued until negotiations to share infrastructure have been completed.*
- 3. Will the provisions of the PSTI Act lead to reduced instances of pole proliferation? And if so, what can be done in areas where operators are already competing over different poles that have been installed? What can be done to immediately address these issues and ultimately to close what appears to be a loophole in the legislation?*
- 4. The lack of community consultation is clearly not satisfactory. We would suggest as a minimum, that before 28 day notices are served, the onus should be put on the operator to visit a target area at least a month before and organise a public meeting with a question and answer element to assess any local concerns. Whilst the onus should be on the operator to resource and organise consultation meetings, they might choose to partner with a local county, district, town or parish council to help organise the meeting. Where the mood is one of overwhelming opposition to telegraph poles, then the operator may seek an option to enter into the traditional planning process.*
- 5. In addition to, or as part of, the required 28-day notice, the operator should be required to place a site notice to inform nearby residents of the intention to install a pole, and its proposed location with a map, and clearly state on the site notice, the avenues open to object.*
- 6. Code of Practice relating to Electronic Communications Code and the Electronic Communications Code (Conditions and Restrictions) Regulations 2003 and Part 16 of Schedule 2 to the Town and Country (General Permitted Development) (England) Order 2015 (GPDO) should be mandatory and not a voluntary option.*
- 7. We notice the provisions in the PSTI Act regarding making operators subject to joining an ADRS (Alternative Dispute Resolution Scheme). We see this as a real step forward opening up opportunities to take disputes outside of the operator's organisation. How does the scheme operate? Is it the same as for broadband providers?*

8. *We suggest that research nationally takes place to discover the experiences of other resident communities that have had permitted development 'done' to them, but also to discover those where the experience has been positive, and learn the lessons from these case studies.*
9. *Our Petition. Exclude telegraph poles from permitted development legislation*

Whilst at present, the government believes, that the current legal framework for permitted development, for telecommunications installations, strikes the right balance, between promoting efficient deployment and taking into account the impacts on communities. We know, that it does not strike the right balance as in its current form there is no regulation to ensure these companies follow their voluntary code of practise hence the proliferation of telegraph poles is happening, in many areas with duplication, if not triplication of telegraph poles, and this offsets the balance in these companies favour, rather than the communities, you represent. We ask you to act on these issues promptly.

Hedon case study - Timeline:

Local operator MS3 holds informal briefing with Hedon Town Council on its intention to come to Hedon and Preston and use existing underground infrastructure.	Meeting July 2022
28 days notice of telegraph pole installation is served on local lamp posts.	September.
Online petition is started on change.org which quickly gathers over 500 signatures. This is discarded in favour of a National Parliament UK petition with 3,099 petition which has four weeks to run. Over 4, 000 additional signatures sign by the time of its closure. New Parliament UK petition “Exclude telegraph poles from permitted development...” is launched 11 October. Expires in April 2024.	September/October
MS3 attend a private meeting with Hedon Town Council at the Town Hall. At short notice, 250 – 300 people assemble outside to protest	On 7 th September.

telegraph poles.	
Public Meeting to protest telegraph poles up to 100 in attendance. It is decided to launch an Action Group to oppose the installation and a BOYCOTT of MS3 and its partner ISPs is called for with households in Hedon asked to sign and submit a Boycott Pledge form.	On 9 th September
Second public meeting is held of 40 people. Boycott pledges have reached 600 households. Residents want to voice their objections and complain. ERYC in a statement say complain to Ofcom. Ofcom say they have very little power to intervene. Residents agree to more direct action.	On 6 th October
Lorry with poles arrives on the Westlands Estate. Residents stage cross the road protests and use their cars to prevent the lorry accessing where they want to dig holes and plant poles. Unorganised spontaneous protest. Police are called and after a 90 minute stand off Hedon gets its first four unwanted poles. A fifth hole is dug and a water main is burst.	On 9 th October.
Lorry with poles arrives on the Shields Road estate. Residents are organised with legally parked cars and cross the road protestors. The lorry parks up on a junction causing an obstruction. Other smaller MS3 vehicles form a convoy behind the lorry causing long traffic delays on Hedon's main Hull Road. Local police arrive and sort out the traffic chaos – the poles lorry parks up more into the estate road, but effectively blocked. The lorry is still parked obstructively, but police spend nearly two hours reviewing the situation and residents parked cars and accept the stalemate status quo. Smaller MS3 vehicles enter estate and holes for poles are dug by contractors. The hole digging and road and footway signage operation is photographed and filmed – breeches of council regulation and HAUC conditions are reported to ERYC. Lorry turns around and heads back to base after three hours.	On 10 th October
Day two of Shields Road opposition to poles. Lorry arrives early 7.20 am but finds road still effectively blocked by residents and legally parked cars.	On 11 th October.
Day 3. An accident occurs. A local driver speeds around the obstructive lorry and strikes a pedestrian stood on the road in front of the lorry. A foot injury. Ambulance called and takes the man to hospital. Police constable arrives to take statements about the accident and gets drawn into the parking issues. After assessing the situation, asks the lorry to leave.	On 12 th October
Day 6 of Shields Road opposition. A Sunday! Lorry parks up in obstructive spot and stays there for six hours.	On 15 th October.
Day 7. Two policeman are assigned to the Shields Road area. One stays and later says that he has been assigned to keep the peace from 8am – 6pm each day. Lorry arrives at 8am and gets through the parked cars. The first pole is planted. Cross the road protestors attempt to stop the lorry, but the police officer threatens arrest. Where cars are parked too near a hole for a pole to be planted, the policeman threatens to call in a transporter to remove vehicles. Four poles planted.	On 16 th October
Protest at MS3 HQ in Hessle as household Boycott Pledges go over 1,000 (1,061) nearly one third of households in the town. Whole streets have signed up to the boycott. A letter to Guy Miller CEO offers to save the	On 19 th October

operator some money by not planting poles in those streets. No reply from MS3.	
After the Shields Road stand-off, MS3 contractor tells us quite openly that they shall open permits across Hedon so that protestors won't know where they are going or when. The campaign keeps watching, photographing and videoing work and reporting incidents tantamount to breaches to ERYC. Boycott declarations and list of ISPs are circulated widely, including on newly-planted poles.	October.
Seek Graham Stuart MP's support at his regular street surgery.	On 21 st October
KCOM makes its position clear in a statement: "We've not had any requests for access to our poles or ducts in Hedon."	On 28 th October
Watson Drive and Thorn Road Corner – Two videos recorded showing MS3 Contractors working in the dark without lights and reflective vests. On Watson Drive contractors dug a hole and planted a pole in one action – without adequate signage or ppe gear, all in the dark and in the rain.	On 31 st October.
ERYC issues a 'Stop Work Notice' in response to MS3's failure to meet the required safety standards of its street works under the New Roads and Street Works Act 1991.	On 1 st November,